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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
MUR 6810) DISMISSAL AND
Michael Jeffrey Turner) CASE CLOSURE UNDER THE
Mike Turner for Congress) ENFORCEMENT PRIORITY
and Kyle Walton Denham, as Treasurer) SYSTEM
)

CELA

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances.

The Office of General Counsel has scored MUR 6810 as a low-rated matter and determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the reasons set forth below, the Office of General Counsel recommends that the Commission dismiss the allegations that Respondents violated the Act or Commission regulations in MUR 6810.

The Complainant in this matter, Chad Lee Choat, alleges that Michael Jeffrey Turner² and his authorized committee, Mike Turner for Congress and Kyle Walton Denham in his official

¹ The EPS rating information is as follows: Complaint filed: April 23, 2014. Response from Michael Jeffrey Turner and Mike Turner for Congress filed: June 20, 2014.

² Michael Jeffrey Turner was a candidate for Oklahoma's 5th Congressional District in the 2014 Republican primary election. Turner lost the June 24, 2014 primary election.

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1 capacity as treasurer (the "Committee"), failed to timely file a Statement of Organization and
2 failed to file a 2014 April Quarterly Report. Compl. at 1. The Complaint states that Turner
3 became a candidate on March 6, 2014, when he officially announced his candidacy in a press
4 release carried by the media and posted on his website, and that Turner subsequently filed his
5 Statement of Candidacy with the Commission on March 13, 2014. The Complaint alleges that
6 the Committee did not file a Statement of Organization until April 15, 2014, which resulted in
7 "more than 1½ months where there was no public disclosure" concerning the Committee or its
8 officers. *Id.* In addition, the Complaint alleges that the Statement of Organization "appeared to
9 be backdated to March 7, 2014." *Id.*

10 The Complainant also alleges that the Committee failed to file its 2014 April Quarterly
11 Report. *Id.* at 1-2. The Complaint cites news accounts that indicate the Committee raised at
12 least \$500,000 and spent approximately \$170,000 during the time period at issue,³ and alleges
13 that the Committee did not file any disclosure reports supporting this activity. *Id.* The
14 Complaint contends that the failure of the Committee to timely register with the Commission,
15 and its failure to file disclosure reports, resulted in campaign activity being withheld from the
16 public. *Id.*

17 In response, the Committee acknowledges that its Statement of Organization was not
18 timely filed, but claims that it was the result of clerical error, and that the Committee took
19 immediate action to rectify the error as soon as it was discovered. Resp. at 1. The Committee
20 explains that, "Due to a clerical error, the FEC Form 1 Statement of Organization was

³ According to the Committee's 2014 Amended April Quarterly Report, it had raised \$253,400 and expended \$185,388 during the reporting period. See Committee's 2014 Amended April Quarterly Report at 2, filed June 21, 2014.

1 erroneously not mailed. The Form 1 was not backdated as alleged in the complaint. As soon as
2 this clerical error was noticed, we immediately filed the Form 1 on April 15th 2014.”⁴ *Id.*

3 The Response also contends that the Committee attempted to file its 2014 April Quarterly
4 Report by submitting a paper copy that was dated and mailed to the Commission on April 15,
5 2014, *see id.* at Attach. 6, Matthew B. Flies, Esq. Aff. (June 3, 2014). The Committee claims
6 that it was not able to file an electronic version of the 2014 April Quarterly Report, until it
7 received an email notification from the Commission acknowledging receipt of its Statement of
8 Organization and assigning the Committee an identification number and password. *Id.* at 1; *see*
9 *also id.* at Attach. 4, Email from FEC to Mike Turner (Apr. 22, 2014); Attach. 5, Email from
10 FEC to Mike Turner (Apr. 21, 2014).⁵ *Id.*

11 The Act provides that a candidate for Federal office “shall designate in writing a political
12 committee . . . to serve as the principal campaign committee of such candidate” and states that
13 “[s]uch designation shall be made no later than 15 days after becoming a candidate.” 52 U.S.C.
14 § 30102(e)(1). The Act further states that a candidate’s authorized campaign committee “shall
15 file a statement of organization no later than 10 days after designation pursuant to 52 U.S.C.
16 § 30102(e)(1).” 52 U.S.C. § 30103(a). Additionally, the authorized committee of a candidate is
17 required to file disclosure reports, which include all receipts and disbursements, on a quarterly
18 basis “no later than the 15th day after the last day of each calendar quarter,” in addition to pre-

⁴ The FEC Envelope Replacement Page for Incoming Documents notes that the document was “Hand Delivered” on April 15, 2014. *See* Statement of Organization, filed Apr. 15, 2014.

⁵ The paper copy of the 2014 April Quarterly Report is listed in the FEC disclosure database as “Miscellaneous Report to FEC,” with a receipt date of April 24, 2014. *See* Miscellaneous Report to the FEC, filed Apr. 24, 2015. The FEC Envelope Replacement Page for Incoming Documents notes that the document arrived by “USPS First Class Mail” and was postmarked April 15, 2014. *Id.* The electronic version of the 2014 April Quarterly Report was received by the Commission on April 22, 2014. *See* 2014 April Quarterly Report, filed Apr. 22, 2014.

1 election reports and post-general election reports, in any calendar year during which there is a
2 regularly scheduled election. 52 U.S.C. § 30104(a)(1)-(2).

3 The available information indicates that the Committee failed to timely file its Statement
4 of Organization pursuant to 52 U.S.C. § 30103(a). The Committee also appears to have failed to
5 timely file its 2014 April Quarterly Report as required by 52 U.S.C. § 30104(a)(1)-(2).

6 However, the Committee claims that the failure to file the Statement of Organization was due to
7 a clerical error and that it made an effort to correct the error as soon as it was discovered.

8 Additionally, it appears the Committee made an effort to timely file its 2014 April Quarterly
9 Report by mailing it to the Commission by regular First Class Mail on April 15, 2014.⁶ The
10 Committee promptly filed its report electronically upon receiving its committee identification
11 number and password.

12 For these reasons, the Office of General Counsel recommends that the Commission
13 exercise its prosecutorial discretion and dismiss the allegations in this matter pursuant to *Heckler*
14 *v. Chaney*, 470 U.S. 821 (1985). Further, the Office of General Counsel recommends that the
15 Commission approve the attached Factual & Legal Analysis and the appropriate letters, and close
16 the file.

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⁶ Had the Committee selected a form of mail service with delivery confirmation instead of regular First Class Mail, its filing would have been deemed timely. See 52 U.S.C. § 30104(a)(5). In this instance, the Committee indicated it was prevented from electronically filing its 2014 April Quarterly Report because it had not first obtained a committee identification number and password.

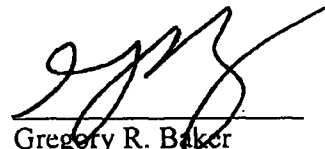
RECOMMENDATIONS

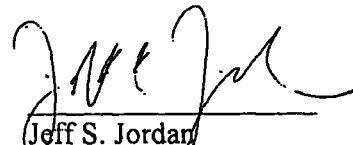
1. Dismiss the allegation that Michael Jeffrey Turner and Mike Turner for Congress and Kyle Walton Denham in his official capacity as treasurer violated 52 U.S.C. § 30103(a) by failing to timely file a Statement of Organization;
2. Dismiss the allegation that Mike Turner for Congress and Kyle Walton Denham in his official capacity as treasurer violated 52 U.S.C. § 30104(a) by failing to file a 2014 April Quarterly Report;
3. Approve the attached Factual & Legal Analysis and the appropriate letters; and
4. Close the file.

Daniel A. Petalas
Acting General Counsel

11/9/15
Date

BY:


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